

Top 10 Planning Cases of 2019-20

Gwion Lewis



Monkhill Ltd v SSHCLG
[2019] EWHC 1993 (Admin)

- LPA refused PP for residential development in an AONB
- No 5yHLS → para. 11(d), NPPF in play
- Inspector identified harm to AONB, gave that harm great weight
- Inspector: AONB harm provided a “clear reason” for refusing permission, in reliance on para. 11(d)(i) → tilted balance in para. 11(d)(ii) was not engaged
- Upheld by High Court: if para. 11(d)(i) applies and there is a “clear reason” to refuse permission, para. 11(d)(ii) falls away



Paul Newman New Homes Ltd v SSHCLG
[2019] EWHC 2637 (Admin)

- NPPF para. 11(d) again
- Some DP policies most important to deciding application for residential scheme were out of date
- But Inspector concluded:
 - proposal was contrary to DP's rural character policy, which was up-to-date and relevant
 - LPA had a 5-year housing land supply
 - ➔ para. 11(d) not engaged

Paul Newman New Homes Ltd v SSHCLG
[2019] EWHC 2637 (Admin)

- High Court:
 - Where one or more relevant DP policies exist, cannot say that there are “no relevant development plan policies”
 - Relevant = *“no more than some real role in the determination”*
 - DP policy not “out of date” just because it has expired



Canterbury CC v SSCLG
[2019] EWCA Civ 669

- Residential development
- DP contained permissive policies supporting res development in some locations
- Inspector allowed appeal: non-compliance with permissive policies did not itself amount to DP conflict
- High Court quashed decision
- Court of Appeal dismissed appeal

Canterbury CC v SSCLG

[2019] EWCA Civ 669

- Court of Appeal:
 - Taken together and in context, DP policies were part of a “comprehensive local plan strategy for housing development”
 - Although individual policies in permissive terms, context showed that together *“they formed a suite of policies for housing development, which left out none of the locations where such development”* should occur
 - Appeal dismissed



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Chichester DC v SSHCLG
[2019] EWCA Civ 1640

- Developer sought PP for 34 houses beyond settlement boundary of a village
- LPA refused permission due to conflict with neighbourhood plan
- Inspector allowed appeal:
 - Proposal in conflict with “aims” of NP, but not contrary to its “policies”
- LPA: Inspector’s distinction between “aims” and “policies” was irrational

Chichester DC v SSHCLG [2019] EWCA Civ 1640

- Claim and later appeal dismissed
- Court of Appeal: proposal can be in conflict with a DP, even if it doesn't conflict with any specific policies, if it is “*manifestly incompatible with the relevant strategy*”
- But here: comprehensive strategy was split between the LP and the NP, with LP dealing with development beyond settlement boundary
- No need to draw inferences about effect of NP policies beyond boundary
- No error of law in Inspector's decision



5

Lambeth LBC v SSHCLG
[2019] UKSC 33

- Supreme Court considered nature of s. 73 applications
- 2010: PP granted for a DIY retail store, subject to condition preventing food sales
- 2014: s. 73 application to vary condition to allow sale of “non-food goods” generally
- Application granted, but fresh planning permission did not repeat express condition preventing food sales
- Site owner applied for certificate to confirm ability to carry out unrestricted retail use, including sale of food

Lambeth LBC v SSHCLG

[2019] UKSC 33

- Inspector granted certificate
- Court of Appeal upheld certificate: 2014 decision notice had failed to impose express condition to reflect new permitted use
- Supreme Court disagreed:
 - Need to focus on ordinary and natural meaning of words, in context (*Trump*: reasonable reader)
 - Limited description of the use in notice had to be read as if it were condition
 - Nothing to indicate intention to remove restriction on food sales

Lambeth LBC v SSHCLG
[2019] UKSC 33

- Other conditions from 2010 permission were still valid and binding
 - Not incorporated by implication
 - Rather – *“nothing in the new permission to affect their continued operation”*
- Still “good practice” to restate, in s. 73 permissions, all of the conditions to which the new planning permission is subject



6

Finney v Welsh Ministers
[2019] EWCA Civ 1868

- PP for 2 wind turbines
- Description of development = turbines “with a tip height of up to 100m”
- Condition required development to comply with plans showing 100m tip height
- s. 73 application to vary plans condition to allow 125m tip height
- Inspector granted s. 73 application, but removed words “with a tip height of 100m” from description of development

Finney v Welsh Ministers
[2019] EWCA Civ 1868

- Court of Appeal quashed inspector's decision:
 - Purpose of s. 73 = enable developers to avoid a breach of planning control by breaching a condition
 - Role of decision-maker is limited to considering conditions: cannot materially amend the description of development
 - If variation sought would lead to a condition in conflict with the description, application should be refused



7

R (Wright) v Forest of Dean DC
[2019] UKSC 53

- PP granted for wind turbine
- Promise made in application to grant 4% of turbine's turnover to a local community fund
- LPA took account of that promise as a material planning consideration when granting PP
- High Court, Court of Appeal and Supreme Court all agreed that PP should be quashed

R (Wright) v Forest of Dean DC

[2019] UKSC 53

- Lord Sales:
 - PP is required for development
 - Development here = material change in use of land
 - Consideration is material if relevant to that change of use
 - Undertaking to fund general community benefits unrelated to proposed change in character of land use “*does not have a sufficient connection with the proposed development*” to make it a material consideration



R (Davison) v Elmbridge BC
[2019 EWHC 1409 (Admin)]

- LPA granted PP for a sports stadium in Green Belt, despite concluding it would harm openness
- PP quashed in High Court
- LPA then granted PP for very similar scheme, concluding it would cause no harm to openness
- Was reasoning behind decision to grant first (quashed) PP material to second decision, engaging principle of consistency?

R (Davison) v Elmbridge BC
[2019 EWHC 1409 (Admin)]

- High Court:
 - Quashed decision was of no legal effect
 - LPA had to consider second application “with a clean slate”
 - But did not mean that reasoning of quashed decision was irrelevant
 - Failure to consider quashed decision could be unlawful if unreasonable not to consider it
 - May need to take into account parts of decision that did not lead to quashing



9

Croke v SSHCLG
[2019] EWCA Civ 54

- Strict limitation period for s. 288 challenges
- Deadline for issuing claim = 23 March
- Claimant intended to issue on that day but:
 - Missed his train
 - Emailed claim form to agent, but mistyped email address
 - Agent arrived at court at 16:25h, refused entry by security
 - Claimant attended on 24 March, but had used wrong form
 - Claim issued with correct form next working day, 29 March

Croke v SSHCLG
[2019] EWCA Civ 54

- Court of Appeal:
 - Time limits in s. 288 are strict
 - Limited extensions only when court office closed on deadline day
 - No basis for extending that principle to unexpected and unpredictable events which prevent claimant getting to court office on time
 - Very limited scope to extend time, exceptionally, on human rights grounds, but not this case

10



R (Plan B Earth) v Secretary of State for Transport

[2020] EWCA Civ 214

- SoS's 'Airports National Policy Statement' (ANPS) had designated a 3rd runway at Heathrow as preferred scheme for meeting need for airport capacity in SE England
- Rejected alternative solution of 2nd runway at Gatwick
- Common ground that in designating ANPS under Planning Act, SoS did not take into account UK Gov's commitments under 2015 Paris Agreement

R (Plan B Earth) v Secretary of State for Transport

[2020] EWCA Civ 214

- All grounds of appeal dismissed except re Paris Agreement
- Commitment to Paris Agreement = UK Gov policy
- Effect of S. 5(8), 2008 Act – ANPS had to include explanation of how UK Gov policy on climate change had been taken into account when its policies (inc runway decision) were formulated
- Irrational to fail to do so in this case
- Remedy: declaration to effect that:
 - designation decision was unlawful
 - ANPS had no legal effect until reviewed to comply with s. 5(8)

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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